



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application  
Inventor(s): Steve Mitchell  
Appln. No.: 10/685,011  
Confirm. No.: 4285  
Filed: October 14, 2003  
Title: Artificial Vertebral Disk Replacement Implant  
With A Spacer and Method

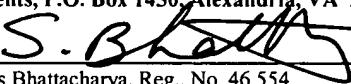
### PATENT APPLICATION

Art Unit: 3732  
Examiner: David Bonderer

**Customer No. 23910**

### **CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450**, on September 27, 2004.

  
Suvashis Bhattacharya, Reg. No. 46,554

(Attorney Signature)

Signature Date: September 27, 2004

### **INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.56**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

***Enclosed with this statement are the following:***

- Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- The present application is being/was filed after June 30, 2003. In accordance with the pre-official gazette waiver of 37 CFR 1.98(a)(2)(i) posted at: [pac/dapp/opla/preognnotice/idswouscopies.htm](http://pac/dapp/opla/preognnotice/idswouscopies.htm), copies of cited U.S. patents and publications are not enclosed. However, copies of cited foreign patent documents and non-patent literature are enclosed in accordance with 37 CFR 1.98(a)(2), as still required, except for those items designated by an asterisk (\*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which complies with the

September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

**PTA Statement under 37 C.F.R. §1.704(d).** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.

***This statement should be considered because:***

— **37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);  
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;  
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,  
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

**37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.

-- AND (*check at least one of the following*) --

(1) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).  
-- OR --

— (2) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

— **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

- (1) It is being filed on or before payment of the Issue Fee;  
-- AND --
- (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);  
-- AND --
- (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

**Fee Authorization.** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

Respectfully submitted,

FLIESLER MEYER LLP

Date: 9/27/04

By: S. Bhattacharya

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**STATEMENT**

*(Attachment to Information Disclosure Statement)*  
*(Use only if required)*

✓ *37 C.F.R. §1.97(e)(1).* THE UNDERSIGNED ATTORNEY HEREBY STATES THAT each item of information contained in this *Information Disclosure Statement* was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this *Information Disclosure Statement*; or

— *37 C.F.R. §1.97(e)(2).* THE UNDERSIGNED ATTORNEY HEREBY STATES THAT no item of information contained in this *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this *Information Disclosure Statement* was known to any individual designated in §1.56(c) more than three months prior to the filing of this statement.

Respectfully submitted,

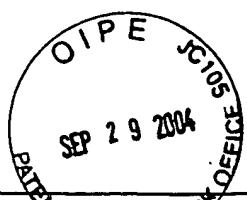
FLIESLER MEYER LLP

Date: 9/27/04

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Sheet 1 of 1

Form PTO-1449 (Substitute) DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE <i>Information Disclosure Statement</i> <b>BY APPLICANT</b> <i>(Use several sheets if necessary)</i>				Attorney Docket Number <b>KLYCD-05010US1</b>	Serial/Patent Number <b>10/685,011</b>		
				Applicant/Patent Owner <b>Steve Mitchell</b>			
				Filing/Issue Date <b>October 14, 2003</b>		Group Art Unit <b>3732</b>	
				<b>U.S. PATENTS</b>			
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
	1.	6,770,095 B2	8/3/2004	Grinberg, et al.	623	17.14	6/18/2002
<b>U.S. PATENT PUBLICATIONS</b>							
Examiner Initial		Patent Application Publication Number		Publication Date	Applicant		
	2.	US 2004/0106998 A1		6/3/2004	Ferree		
<b>PENDING U.S. PATENT APPLICATIONS</b>							
Examiner Initial		Application Number	Filing Date	First Named Inventor		Petition to Expunge? Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>FOREIGN PATENT DOCUMENTS</b>							
Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Trans- <u>lation</u> Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>OTHER DOCUMENTS</b> (Include author (if any), title, publisher and place of publication, date and pertinent pages)							
Examiner				Date Considered			
<b>*EXAMINER:</b> Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.							
*1 = Copy not submitted because it was submitted in prior application SN <u>/</u> _____, filed _____, 20_____, relied on under 35 USC §120. *2 = Copy not submitted because it was submitted in prior application SN <u>/</u> _____, filed _____, 20_____, relied on under 35 USC §120.							